

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD** on January 13, 1999
at 9:00 A.M., in Room 108 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Steve Doherty (D)
Sen. Sue Bartlett (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Jodi Pauley, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 158, 1/8/1999; SB 165,
1/8/1999
Executive Action: SB 8; SB 20; SB 54; SB 60;
SB 63

HEARING ON SB 158

Sponsor: SENATOR BILL GLASER, SD 8, Huntley

Proponents:

Brenda Nordland, MT Department of Justice

Harold Hanser, State DUI Task Force
Craig Reap, MT Highway Patrol
Patricia Saindon, MT Department of Transportation
Charles Brooks, State DUI Task Force

Opponents: None

Opening Statement by the Sponsor:

SENATOR BILL GLASER, SD 8, Huntley, said this bill will make it an offense to possess and ingest dangerous drugs.

Proponent's Testimony:

Brenda Nordland, MT Department of Justice, said this is the same bill that was here last session. She stated on page 1, line 15, it is addressing the change to Montana's current possession of dangerous drugs. It would allow for the prosecution of an individual who has ingested dangerous drugs, but who would not otherwise have the physical drugs on his or her body. It provides on page 2, lines 6 and 7, that ultimate users and practitioners acting under the supervision in a practice are exempt from this section. There are also many people who are taking dangerous drugs as prescription drugs and this bill won't affect them. On page 5, when any illegal drug is ingested and the person is in operation of a vehicle it will also be an offense. She said on line 19 and 21, page 5, there is a reference to urine and they no longer use urine as a sample and this needs to be stricken. She handed out proposed amendments. **EXHIBIT(jus09a01)**

Harold Hanser, State DUI Task Force, said presently the DUI laws make it impossible to prosecute. The use of dangerous drugs is an increasing problem in Montana as well as throughout the country. Drug DUI, in the future, may equal that of alcohol DUI. They have to have the ability to take drug drivers off of the highways. He used the example of the Georgia law which says if they have any dangerous drugs in their body it is treated the same as an alcohol DUI. The difficulty in prosecution is there is not the same scientific evidence that they have with the Blood Alcohol Content (BAC) of alcohol. Montana is one of the only states that does not make it a criminal offense to ingest dangerous drugs. This is why they need the ingesting law to make this work. Law enforcement officers are not opposed to this legislation. No one can be tested unless a stop is made on reasonable suspicion. This law has been consistently upheld by the Georgia Supreme Court. Half of the deaths on our road are attributed to alcohol or drug impaired drivers.

Craig Reap, MT Highway Patrol, said there has been a continued increase use of drugs and it complicates the enforcement of these crimes and prevention tactics. This bill will give them another tool to be more effective.

Patricia Saindon, MT Department of Transportation, said they are seeing an increase in drug use in drivers that are stopped for DUI. Heroin could be becoming more of a problem in DUI cases than alcohol.

Charles Brooks, State DUI Task Force, handed out testimony from Jim Hutchinson and highlighted some paragraphs. **EXHIBIT(jus09a02)**

{Tape : 1; Side : A; Approx. Time Counter : 9:22 a.m.}

Opponent's Testimony: None

Questions from Committee Members and Responses:

SENATOR SUE BARTLETT referred to **exhibit 2**. They have set BAC at a certain level, but there is no chosen levels for drugs showing impairment. Are there legal troubles by incorporating dangerous drugs without any scientific basis to demonstrate that it impairs a person ability to operate a motor vehicle? **Harold Hanser** said this law as been in effect for several years in the state of Georgia and this question has been raised to their Supreme Court. This law is valid and it represents a legitimate community in public safety concern. The traffic stop has to be based on reasonable suspicion that there is an impaired driver. The officer cannot stop people just to do a drug test. Montana can't even prosecute under the drug laws, because it doesn't have the ingestion law. The alternative is that they continue to see expanded drug use and death on our highways.

SENATOR BARTLETT asked if the mandatory two year minimum sentence is appropriate for a person who has ingested any level of dangerous drugs? **Mr. Hanser** said in the 1970's, drugs became a problem in Montana. If they are going to deal with the social issues of violence, then they need to send a message to the people that do dangerous drugs that there will be severe penalties. These offenders, who have been involved in drugs and alcohol should have to go through mandatory treatment programs.

SENATOR MIKE HALLIGAN asked if a field Breathalyzer can detect the presence of drugs? **Brenda Nordland** said no it cannot.

SENATOR HALLIGAN said if an officer stops a vehicle and cannot smell alcohol, but thinks he may be impaired by drugs and places him under arrest. Then he does the intoxalyzer and it detects drugs, would the driver then have to go to the hospital for a blood test to determine which kind of drug it is? **Brenda Nordland** said if the officer believes after the stop that he or she has probable cause to arrest, then a motorist either submits to testing or loses his/her license. If there was no alcohol detected, but the mannerism of the motorist combined with the driving leaves the officer to believe that there may be drug involvement, the officer will not ask for a breath test, he will do a blood test. Officers go through training to recognize drugs and what kind of symptoms are involved with dangerous drugs.

SENATOR HALLIGAN asked who pays at the hospital for the blood test. **Brenda Nordland** said it is the responsibility of the Department of Justice to pay for this.

SENATOR HALLIGAN asked what if they are tested and it is a legal drug. **Brenda Nordland** said they can't prosecute under this law, but would have to prove impairment. This law only deals with illegal ingestion.

SENATOR HALLIGAN asked if the technology is good enough at rural hospitals to identify these drugs. **Brenda Nordland** said all of the testing is done at the state crime lab.

SENATOR HALLIGAN asked what is the time frame for this. **Brenda Nordland** said she was not sure.

{Tape : 1; Side : A; Approx. Time Counter : 9:36 a.m.}

SENATOR STEVE DOHERTY asked if they adopt this are they consenting to have blood drawn? **Brenda Nordland** said that is current law already.

SENATOR DUANE GRIMES asked if the prescription issue is what happened in the House last year to this bill? **Brenda Nordland** said it was an issue over the differentiation of drugs. They felt it was too invasive and they didn't trust law enforcement officers to be able to make determinations.

SENATOR DOHERTY used the example of taking 10 Sudafed instead of one and he is stopped for being impaired. Would he be busted for ingesting a legal drug? **Brenda Nordland** said under Title 50 there is an exemption for non-prescription over-the-counter drugs. If it is just Sudafed they would have to show impairment and this law does not cover Sudafed.

SENATOR GRIMES said 40 percent of all accidents are related to alcohol. He asked if they knew what percentage is related to drugs or a combination of drugs and alcohol. **Brenda Nordland** referred to **exhibit 2**. She said in 30-38 percent of the cases there was poly-drug use.

CHAIRMAN GROSFIELD asked how much is 60 grams of marijuana? And if he ingested second-hand smoke, how much would he have to ingest to reach 60 grams? **Brenda Nordland** said she wasn't sure but felt he would have to ingest a lot to get 60 grams.

CHAIRMAN GROSFIELD asked if they are making it a felony to inhale and why do they need section 1 at all. **Brenda Nordland** said the ability to possess dangerous drugs is currently illegal. But there is the loophole that says it is not illegal to use them and this clarifies possession.

CHAIRMAN GROSFIELD said in title 50, chapter 32, the list is 16 pages long and does the state crime lab differentiate these. **Brenda Nordland** said they are not going to encourage the Highway Patrol to frivolously request drug chem screens on a whim. They cannot see a huge increase without a cost.

CHAIRMAN GROSFIELD asked how expensive is the test? **Jim Hutchinson, State Crime Lab**, said research has shown that in a 6'x6'x8 foot high room with a continual smoking machine it would take four hours to get an individual high enough for neglect with second hand smoke of a drug. Sixty grams is equivalent to two ounces and if anybody smoked that much they would not survive. The cost issue for blood tests is \$10 to \$15.

CHAIRMAN GROSFIELD asked why there wasn't a fiscal note with this bill? **Mr. Hutchinson** said these analysis are done now. They can't use the detection of drugs from a blood test by the courts because they don't have a possession law.

SENATOR DOHERTY asked in how many cases was an officer not able to get a person with the physical possession of drugs, but they had ingested the drugs? **Mr. Hutchinson** said he knew of three cases in the last six months.

{Tape : 1; Side : B; Approx. Time Counter : 9:48 a.m.}

Closing by Sponsor:

SENATOR GLASER said put yourself in a position in which you have to give blood to your great-granddaughter after being in an

accident involving an impaired driver. They need to protect the members of public from people who use illegal drugs.

HEARING ON SB 165

Sponsor: SENATOR J.D. LYNCH, SD 19, Butte

Proponents:

Bob Gilbert, MT Tow Truck Assoc.

Milo Casagrande, MT Tow Truck Assoc.

Jim Dusenbery, MT Tow Truck Assoc.

Don Cerovski, MT. Tow Truck Assoc.

Brenda Nordland, MT Department of Justice

Opponents:

Bob Pyfer, MT Credit Union

Opening Statement by the Sponsor:

SENATOR J.D. LYNCH, SD 19, Butte, said towers should get paid for their services. Towers are not any different than banks or credit unions. They want to be paid for their services because they store vehicles on behalf of the owner and often times are required by the highway patrol to take care of abandoned vehicles.

Proponent's Testimony:

Bob Gilbert, MT Tow Truck Assoc., said this bill will allow towers to collect for services rendered. The current situation is, if a vehicle is towed into a yard, the owner can come get his/her vehicle and tell the tower to send the bill. There is no legal recourse to collect that money. With this bill they would have a possessor lien which takes place the moment the tower picks up the vehicle. A vehicle that has been towed to a locked yard is in better shape than one that has been abandoned along the highway and is subject to vandalism. There are forms under section 2 that specifies how a tow truck operator will file and release a lien, etc. Storage charges cannot exceed 60 days unless the owner has been contacted. He said as a banker, he would rather see a vehicle come into a locked storage yard rather than along the side of the highway. This bill will help the small business owners of Montana. He handed out letters of support.

EXHIBIT (jus09a03)

Milo Casagrande, MT Tow Truck Assoc., said this bill is very important especially for small towers. When law enforcement has them come pick up a vehicle they request the tower to get the

vehicle and secure it. This is at the towers expense until the owner comes to repossess it. At this time there is no lien law.

Jim Dusenbery, MT Tow Truck Assoc., said they have to pick up vehicles and are responsible for that vehicle until is picked up by its respectful owner. It is important the tower gets paid for his services.

Don Cerovski, MT. Tow Truck Assoc., said this bill would save the liability of his business.

Brenda Nordland, MT Department of Justice, said they already have other types of possessor liens and this would fit under those liens. She recommended an amendment on page 3, section 5, the department does not need to be involved, the sheriff is more than qualified to handle distribution of proceeds. **EXHIBIT(jus09a04)**

{Tape : 1; Side : B; Approx. Time Counter : 10:00 a.m.}

Opponent's Testimony:

Bob Pyfer, MT Credit Union, said this bill is not needed because of the agisters lien. It does provide a lien for services done on private property and those services include safe keeping and carriage. Towing and storage should be under the agisters lien. The agisters lien requires a 30 day notice to lien holders before they get paid. Under this bill there is no written or actual notice required by the bill. A lien holder could have the 60 day storage charges plus towing, etc. and they could have a lot of costs before having any notice. This bill is not needed if the agisters lien law is used by towing agencies. If this bill is favorable by the committee then the amendment of a 30 day notice should be required.

Questions from Committee Members and Responses:

SENATOR REINY JABS asked if a person comes in and gets his car right after it was taken by the tower, is the owner immediately charged for the paperwork, etc.? **Mr. Gilbert** said no, the owner would just have the towing charge. There is no filing until after 30 days.

SENATOR JABS asked if the car is sold and they cannot find the owner of the vehicle to give the proceeds to, what happens to that money? **Mr. Gilbert** said it would go back to the owner of the lien. If they couldn't find an owner then it would go into the county fund.

SENATOR BARTLETT asked why they didn't amend the agisters lien? **Mr. Gilbert** said they researched this area and there was no previous lien that they fell under. There are certain parts of the agisters lien they could fall under, but it is not clear. They felt having an new lien was easier.

SENATOR BARTLETT said another approach is to go into the agisters lien and make it clear that it does apply to the kind of charges that they are concerned about. The advantage is they are established liens and everyone is used to working with them. **Mr. Gilbert** said they would be willing to work on this. The only concern is if they don't do something, they are left out in the cold.

SENATOR BARTLETT asked on page 1, line 17-18, it talks about storage charges. Do storage charges quit accumulating after the 60 days or are they eliminated all together from the lien. **Mr. Gilbert** said they quit accumulating and this is current law.

SENATOR BARTLETT said it talks about the sheriff or city police taking enforcement for the sale of abandoned vehicles etc.. Usually it is always the sheriff who takes care of this, not the city police. **Mr. Gilbert** said perhaps this is a reference to a car picked up in the city, etc. but he was not sure.

SENATOR DOHERTY said if there is a motor vehicle accident and the highway patrolman has the tower take it to his yard and store it and as time goes by, the car gets forgotten. He asked does this bill clarify that the highway patrol, city police, etc. is responsible for retaining those charges. **Mr. Gilbert** said he didn't believe that was in this bill.

SENATOR DOHERTY said the responsibility often falls on the tow truck operator and nobody wants to pay for it. It is not the owner's fault that the highway patrol requested it to be stored. **Mr. Gilbert** said this is correct and it is a problem, but separate from this piece of legislation.

SENATOR JABS asked if insurance companies pay for storage? **Mr. Gilbert** said yes.

CHAIRMAN GROSFIELD asked if the title was broad enough to do this through the agisters process. **Valencia Lane** said the title could be amended because it says they are creating a lien and they could amend it to clarify agisters lien laws.

Closing by Sponsor:

SENATOR LYNCH said one of the reasons this cannot be covered under the agisters lien is it does not include towing. This bill will help the small business people and that is important.

{Tape : 1; Side : B; Approx. Time Counter : 10:17 a.m.}

EXECUTIVE ACTION ON SB 8

Motion: **SENATOR DOHERTY** moved amendments for SB 8.

EXHIBIT (jus09a05)

Discussion:

Valencia Lane discussed amendments. **(EXHIBIT 5)** She also discussed a memorandum from Joe Thaggard, Department of Justice. **EXHIBIT** (jus09a06)

SENATOR DOHERTY said he was concerned about procedural irregularity and what those terms meant. The search and seizure ground is murky enough already without adding new areas. He referred to the memorandum. **(EXHIBIT 6)**

CHAIRMAN GROSFIELD asked if the amendments satisfy their concerns. He read from title 44, chapter 5 on confidential criminal justice information. The question is, if John Doe whose child is a friend of the drug runner's child and they are talking about soccer etc. several times a day, is that person's identity going to be protected. **Valencia Lane** said there was great concern that innocent people may be hurt or picked up in this web of information. Amendment #5 will cover this. **(EXHIBIT 5)** She said this information will be treated like any other criminal justice information and there are controls and limitations on how the information can be used.

CHAIRMAN GROSFIELD asked if any criminal justice information is confidential and are they adding to the information in Title 44. **Valencia Lane** said no, they are not adding to it, but it is clarified. **Mike Batista, MT Department of Justice**, said this information is protected by the criminal justice statute. It is no different than an investigative type of situation where those things remain confidential.

CHAIRMAN GROSFIELD asked how those can be accessed and under what circumstances. **Mike Batista** said it can only be accessed or provided in the course of a trial or in appeal.

CHAIRMAN GROSFIELD asked if in the course of the trial, the prosecutor is likely to ask for or the judge will grant a request

for the phone recorders to be entered as an exhibit. Will only the portion that involves the suspects be entered or the whole thing? **Mr. Batista** said only the suspects would be used not the whole phone record.

CHAIRMAN GROSFIELD asked how is this normally done? **Mr. Batista** said normally the prosecution will use only information that supports prosecution.

CHAIRMAN GROSFIELD asked why can't they clarify that in the statute? **Beth Baker, MT Department of Justice** said when she worked in the federal court they will only highlight the numbers that they want to draw the jury's attention to. Those records are put in as exhibits, but they are not strictly made public. If the prosecutor is concerned about an individual's privacy right they could blacken out the other numbers. Steps could be taken on a case by case basis.

SENATOR GRIMES said amendment #2 satisfies some of his concerns. He also discussed amendment #5. **(EXHIBIT 5)**

CHAIRMAN GROSFIELD said in some communities there may be a local official or some aggressive reporter that will destroy someone's career because they get caught up in the loop and are exposed. **Valencia Lane** said the intent of the amendment is that they are protecting innocent people. **(EXHIBIT 5)**

SEN. HALLIGAN said the attorney is going to want the entire phone record and the prosecutor will decide at what point to blacken certain numbers out. This is going to have to be dealt with on a case by case basis and innocent people are going to have to be protected.

SEN GRIMES said there has to be some other probable cause, they can't just prosecute on a telephone number.

SEN. DOHERTY said he doesn't know how much more confidential they can make it in terms of the criminal justice information act. He said it may be hard to differentiate between party "x" and "y." There may be 25 calls to party "x," the accused, and 50 calls to party "y," who is the upstanding citizen. He said in current law party "y" still may be accused and dragged into a criminal investigation. He said he is uncomfortable with it in current law and this legislation at least makes it some better.

Valencia Lane discussed 6 and 7 of the amendments. **(EXHIBIT 5)**

Vote: Motion **carried unanimously 9-0.**

Motion/Vote: SEN. JABS moved that SB 8 DO PASS AS AMENDED.
Motion carried unanimously 9-0.

{Tape : 2; Side : A; Approx. Time Counter : 10:45 a.m.}

EXECUTIVE ACTION ON SB 16

Discussion:

Valencia Lane passed out amendments to SB 16 and explained them.
EXHIBIT(jus09a07)

Motion: SEN. DOHERTY moved that AMENDMENTS FOR SB 16 BE ADOPTED.

Discussion:

Dal Smilie, Department of Administration, said he has not heard from the bankers.

Substitute Motion: SEN. DOHERTY made a substitute motion to
WITHDRAW HIS AMENDMENTS.

Discussion:

CHAIRMAN GROSFIELD said he would like to hold off on this bill until a later date.

EXECUTIVE ACTION ON SB 20

Discussion:

Valencia Lane discussed amendments for SB 20 requested by SEN. SHEA. **EXHIBIT**(jus09a08) And she discussed amendments requested by SEN. BARTLETT. **EXHIBIT**(jus09a09)

{Tape : 2; Side : A; Approx. Time Counter : 10:54 a.m.}

Beth Baker, Department of Justice, discussed the amendments.
(EXHIBIT 8)and (EXHIBIT 9).

Motion/Vote: SEN. GRIMES moved that AMENDMENTS BY SEN. SHEA FOR SB 20 BE ADOPTED. Motion carried unanimously 9-0.

Discussion:

CHAIRMAN GROSFIELD said this is a voluntary part-time board in Montana, but a state with any number of people cannot be doing it this way. He said he doesn't want to create a new department,

because there is a lot of merit to citizen boards. Perhaps they need an interim committee to study this.

SEN. BARTLETT said she has requested a resolution to study this during the interim. The focus on the resolution is on the entire sentencing system and the function of the pardon and parole board.

SEN GRIMES said he would like some people to come before the committee and talk about some options. **Craig Thomas, Department of Corrections**, said eventually the State of Montana will move to a full time professional board. He said, currently, they are trying to deal with the large numbers and still maintain a citizen board. The other option is increasing the number of volunteer citizen board members. He said 76 percent of the boards in the states have one full time board member. This bill provides a very cost effective way to handle case loads and provides consistent hearings.

SEN. GRIMES said he felt it would be better in the long term to increase the number of citizen board members than to increase the staff.

Motion: **SEN. BARTLETT** moved that **AMENDMENTS TO SB 20 BE ADOPTED. (EXHIBIT 9)**

Discussion:

SEN. BARTLETT discussed the amendments. **(EXHIBIT 9)**

Beth Baker discussed some changes in the amendments. **(EXHIBIT 9)**

Valencia Lane said these are good changes.

SEN BARTLETT asked that these changes be added conceptually. The committee had no objection.

Vote: Motion carried unanimously 9-0.

Motion/Vote: **SEN. BARTLETT** moved that **SB 20 DO PASS AS AMENDED. Motion carried unanimously 9-0.**

{Tape : 2; Side : A; Approx. Time Counter : 11:12 a.m.}

EXECUTIVE ACTION ON SB 65

Motion: **SEN. HOLDEN** moved that **AMENDMENTS FOR SB 65 BE ADOPTED. EXHIBIT (jus09a10)**

Discussion:

SEN. HOLDEN discussed the amendments. **(EXHIBIT 10)**

SEN. HALLIGAN said because there is already the words "purposely or knowingly possesses" in the statute, intent already has to be proven and this is not needed.

CHAIRMAN GROSFIELD said if he had a gun pointed at his head, it is pretty hard to argue that he didn't know it was there. He used the example of a school board and that they wouldn't grant an exception to the law dealing with firearms when talking about liability.

SEN. HALLIGAN said he didn't think it would be a problem with the schools as they deal with this problem already.

CHAIRMAN GROSFIELD asked if it was typical to have a statute that made something a crime and then have a local board or agency make exceptions to the statutes. **Valencia Lane** said she did not know of any that do this. School boards would allow things like hunter education.

SEN. GRIMES said by adding the amendment, they are changing the existing law by what happens outside and inside a school building. He said he would prefer what they had from last session.

SEN. JABS asked doesn't intent have to be proven? **SEN. HALLIGAN** said they are trying to make sure they have a gun free school zone.

CHAIRMAN GROSFIELD asked if under this statute couldn't they make a gun free school zone just like a drug free zone.

Vote: Motion **failed 1-8** with **SEN. HOLDEN** voting yes.

{Tape : 2; Side : B; Approx. Time Counter : 11:25 a.m.}

Motion: **SEN. HOLDEN** moved that **AMENDMENTS FOR SB 65 BE ADOPTED.**
EXHIBIT (jus09a11)

Discussion:

SEN. BARTLETT said if they are trying to run a business on school property, the word individual should be defined. **(EXHIBIT 11)**

Valencia Lane said the word person does include a corporation under the law.

CHAIRMAN GROSFIELD said they would change it conceptually and strike "an individual" and put in "a person".

Vote: Motion **carried unanimously 9-0.**

Discussion:

SEN. GRIMES said he was a little concerned that they would have to rely on law enforcement discretion. This wouldn't be a big deal in urban Montana, but in rural Montana it could be a problem. He said what would it take to make this an option of the municipality to pass this as a local ordinance. **Valencia Lane** said this could be a Constitutional concern. One area it may affect is delegation of legislative authority and equal protection. She said they heard testimony from the school board in Butte that they adopted a policy similar to what they are asking here. The options already exist.

SEN GRIMES asked if this exists for any entity that may want to adopt this. **Valencia Lane** said it is more of a school board issue than local government.

CHAIRMAN GROSFIELD said a school board may adopt a policy that says no weapons on campus. And if any student is caught, he is expelled from school. He wondered if this would apply to someone else besides a student and would they be charged for trespassing, etc.. **Steve Bullock, Dept. of Justice**, said he believed many school districts have policies for expelling students. He said in 45-8-351 there is a restriction on firearms and this provision grants localities to adopt by ordinance.

SEN. HALLIGAN asked if it is easier to focus on students and not include adults, parents, etc.. **Steve Bullock** said the problem is the equal protection act and if an unattended weapon is in the vehicle it could be a problem.

{Tape : 2; Side : B; Approx. Time Counter : 11:35 a.m.}

SEN. GRIMES asked if the school board assoc. was going to draft a blanket policy that would accept the unintentional weapon that may be in the truck. **SEN. HALLIGAN** said he talked to Lance Melton and they didn't admit to a blanket policy, but there are several policies to deal with this issue. **Steve Bullock** said the intention is not an absolute liability. The concern is not the gun in the truck, but for the safety of the child who is in that vehicle. He said he understands the concern of giving the local prosecutor discretion and the application of this law would be difficult for local prosecutors.

CHAIRMAN GROSFIELD said this section of law is 20-5-202.

Motion: **SEN. HALLIGAN** moved that **SB 65 DO PASS AS AMENDED.**

Discussion:

SEN. GRIMES said if they went to any rural high school during feeding season, half of those trucks would have a bale knife in them. He is concerned about making a new class of felons.

SEN. MCNUTT said in his area they use beet knives and student trucks are going to have those knives in them and they are purposely and knowingly there. He said this is a different situation in the rural part of the state and is not a problem.

Substitute Motion: **SEN. HALLIGAN** made a substitute motion to **WITHDRAW HIS MOTION ON SB 65.**

Discussion:

SEN. HALLIGAN said perhaps they should wait until they address some of these issues.

EXECUTIVE ACTION ON SB 54

Motion: **SEN. HALLIGAN** moved that **AMENDMENTS FOR SB 54 BE ADOPTED. EXHIBIT(jus09a12)**

Discussion:

Rick Day, MT Department of Corrections, discussed the amendments. **(EXHIBIT 12)**

Valencia Lane discussed the amendments. **(EXHIBIT 12)**

Vote: Motion **carried unanimously 9-0.**

Motion/Vote: **SEN. HALLIGAN** moved that **SB 54 DO PASS AS AMENDED.**
Motion **carried unanimously 9-0.**

{Tape : 2; Side : B; Approx. Time Counter : 11:55 a.m.}

EXECUTIVE ACTION ON SB 63

Discussion:

Beth Baker, MT Department of Justice, referred to the bill and said their questions deal with page 3, line 23 and 24. She said

federal law requires lifetime registration for a person that has committed an aggravated sexual offense. This is the reason for the amendment so they can be in compliance with federal law.

EXHIBIT(jus09a13)

CHAIRMAN GROSFIELD asked why the three year rule was not in federal law. **Beth Baker** said this was not specifically required. But the Board of Crime Control wants to make sure it is aimed at sex offenders and not innocent acts of children that may be the same age.

CHAIRMAN GROSFIELD asked if this language complies with federal law? **Beth Baker** said it does make it less strict, but will satisfy the Federal Bureau of Justice assistance and will not withhold any of their grant money. **Cathy Kendall, Board of Crime Control**, said there was some concerns about the incest laws, and adding the three years or older satisfies that. She said when they have offenders moving across state lines and jurisdictions, the same rules apply. **EXHIBIT(jus09a14)**

Motion/Vote: **SEN. HALLIGAN** moved that **AMENDMENTS FOR SB 63 BE ADOPTED**. Motion carried unanimously 9-0.

Motion: **SEN. HALLIGAN** moved that **SB 63 DO PASS AS AMENDED**.

Discussion:

SEN. HOLDEN said if sex occurs between a 17 year old female and a 20 year old male and they got married later, would that male be registered as a sex offender. **Beth Baker** said incest involves sexual relationships between related people as defined in the statutes. Consent under the incest statute is a defense only if the incest is with a step son or daughter and they are over 18. And it is a felony offense if the victim is under 16 and the offender is three or more years older. They are only talking about conduct that is already criminalized by state law. With the amendment, registration is required for incest whenever the victim is under 18 and defender is 3 or more years older.

SEN. HOLDEN asked if this bill is directed at incest? **Beth Baker** said it is intended to cover all sex offenses against minors. The only two sections that are affected are the indecent exposure and incest sections. Consented sex between unrelated people is not recognized by this.

SEN HOLDEN read page 1, line 30 and why are they striking this? **Beth Baker** said hopefully by striking this they will be consistent with other states. This will eliminate the confusion that offenders have to register in some states and not in others.

Right now incest is a crime even with consenting people over 16. She said of the 900 they have on the registry only 75 are incest offenders.

CHAIRMAN GROSFIELD asked if incest between a 17 year old and a 20 year old would not have to have lifetime registration. **Beth Baker** said that was correct.

Vote: Motion carried unanimously 9-0.

EXECUTIVE ACTION ON SB 60

Motion: SEN. HALLIGAN moved that AMENDMENTS FOR SB 60 BE ADOPTED. **EXHIBIT**(jus09a15)

Discussion:

SEN HALLIGAN explained the amendments. (**EXHIBIT 15**)

Vote: Motion carried unanimously 9-0.

Motion: SEN. HALLIGAN moved that SB 60 DO PASS AS AMENDED.

Discussion:

SEN. HALLIGAN said this will lessen the need for district court judges and a special master can manage case loads that a judge cannot handle. It can be a permanent or temporary position to deal with certain issues. The county commissioners can grant \$20,000 over the entire year to deal with standing masters and they don't have to spend it if they don't want to.

SEN. MCNUTT said judges can set the wage and they tend to be real liberal on what they spend. **SEN. HALLIGAN** said they would have to pay according to the pay plan in the county.

SEN. HOLDEN asked for clarification on the fiscal note. **SEN. HALLIGAN** said it is at the discretion of the county commissioners, they do not have to do this at all and it takes the fiscal note out of the bill.

SEN. HOLDEN said once a county employee is on board, it is very difficult to release them. If there is a work load problem, why not hire clerical staff that would make cases go through faster.

SEN. HALLIGAN said it is the judges that deal with these cases, not the clerical staff.

SEN. HOLDEN asked if they could put an amendment to have the governing body of the county decide if they want to do this.

Valencia Lane said they are talking about imposing criminal laws that have a due process and equal protection concerns. What they are talking about here is with permission of the county, they will accept these costs. This is not a delegation of legislative authority.

SEN. HALLIGAN said if the county is cutting budgets the last person hired will be out the door.

Vote: Motion **carried 6-1 with SEN. HOLDEN voting no.**

ADJOURNMENT

Adjournment: 12:18 P.M.

SEN. LORENTS GROSFIELD, Chairman

JODI PAULEY, Secretary

LG/JP

EXHIBIT (jus09aad)